APPEAL # 24-1435
TAX TYPE: REFUND REQUEST
TAX YEAR: 2024
DATE SIGNED: 7/15/2025
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. MOTOR VEHICLE DIVISION - CUSTOMER SERVICE, UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 24-1435 Account No: ##### Tax Type: Refund Request Tax Year: 2024 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner:	TAXPAYER PETITIONER'S REP-1
For Respondent:	RESPONDENT'S REP-1, Assistant Attorney General RESPONDENT'S REP-2, Accounting Manager, Motor Vehicle Division RESPONDENT'S REP-3, Attorney General's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 30, 2025, for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The hearing was conducted by video conference. Petitioner is appealing a Statutory Notice-Refund Request denial, dated DATE, through which the Respondent ("Division") denied the Taxpayer's request for a refund of sales tax, an age based uniform fee, and title, licensing and registration fees in the amount of $$$$$.

APPLICABLE LAW[1]

Utah Code § 41-1a-201 prohibits the operation of a motor vehicle in the state of Utah unless it has first been registered, as set forth below:

> (1) Unless exempted, a person or automated driving system may not operate and an owner may not engage an automated driving system, give another person permission to engage an automated driving system, or give another person permission to operate a motor vehicle, combination of vehicles, trailer, semitrailer, vintage vehicle, restored-modified vehicle, off-highway vehicle, vessel, or park model recreational vehicle in this state unless it has been registered in accordance with this chapter, Title 41, Chapter 22, Off-highway Vehicles, or Title 73, Chapter 18, State Boating Act.
> (2) Subject to Subsection 53-8-209(3), a violation of this section is an infraction.

Registration of a vehicle is for a period of twelve months, as set forth in Utah Code Ann. § 41-1a-215, below in pertinent part:

> (1) (a) Except as provided under Subsections (2) and (3), every vehicle registration, every registration card, and every registration plate issued under this chapter for the first registration of the vehicle in this state, continues in effect for a period of 12 months beginning with the first day of the calendar month of registration and does not expire until the last day of the same month in the following year.
> . . . .
> (4) When the expiration of a registration plate is extended by affixing a registration decal to it, the expiration of the decal governs the expiration date of the plate.

When a vehicle has a new owner, Utah Code Ann. § 41-1a-703 requires the new owner to obtain a new registration, with § 41-1a-703 providing the following, in pertinent part:

> (1) The transferee, before operating or permitting the operation of a transferred vehicle on a highway, shall:
> (a) present to the division the certificate of registration and the certificate of title, properly endorsed;

[1] The Commission cites Utah law in effect as of the date of the Division's Statutory Notice-Refund Request.

> (b) apply for a new certificate of title and obtain a new registration for the transferred vehicle, as upon an original registration, except as permitted under Sections 41-1a-223, 41-1a-520, and 41-1a-704; and
> (c) apply to the division to have the license plates assigned to the new registered owner of the transferred vehicle if the license plates were included as part of the sale, trade, or ownership release of the transferred vehicle.
> (2) A violation of this section is an infraction.

An application for a refund may be made to the Division under Utah Code §41-1a-1203, set forth below:

> If the division through error collects any fee not required to be paid, the fee shall be refunded to the person paying the fee upon written application for a refund made within six months after date of the payment.

Utah Code §59-12-103(1)(a) provides for a tax on retail sales of tangible personal property made within the state.

Utah Code §59-12-107(7) provides how a sales or use tax is to be paid to the state of Utah on motor vehicle sales as follows:

> (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state.
> (b) The commission shall collect the tax described in Subsection (7)(a) when the vehicle is titled or registered.

DISCUSSION

The issue before the Tax Commission in this matter is whether the Petitioner is exempt from sales tax, age based uniform fee, and title, licensing and registration fees that the Division required him to pay on DATE, when he went to the office of the Division to title and register in his name the motor vehicle he had purchased from a private seller. Based on the Certificate of Title that Petitioner had submitted to the Division, the date of sale had been DATE, and the purchase price had been $$$$$. The vehicle purchased by the Petitioner was a VEHICLE-1 pickup truck. The amount of the sales tax, age based uniform fee, and title, licensing, and registration fees charged was $$$$$, and this is the amount that the Petitioner is requesting be refunded. The Division pointed out at the hearing that of this amount, $$$$$ was for sales tax, $$$$$ was for the age based uniform fee, and $$$$$ was for title, licensing, and registration fees. The Division stated that even if the Tax Commission determined the Property Owner qualified for a refund of the sales tax and age based uniform fee, there was no exemption for the state title, licensing, and registration fees.

I. Petitioner's Position

The Petitioner requested the refund based on the argument that he was exempt from Utah taxes and fees. He stated that he had presented a document to the DMV showing he was a member of the TRIBE-1 when he went to register his motor vehicle. The Division submitted at the Initial Hearing the document the Petitioner had provided to the DMV as evidence that he was a member of the TRIBE-1. This was a letter of certification, dated DATE, from PERSON-1, Secretary, of the TRIBE-1. If Petitioner had a tribal identification card with a federal bureau number, he did not submit a copy of that at the hearing. The document that he had submitted to the DMV stated as follows:

> To Whom it May Concern,
> TAXPAYER is an enrolled member of the TRIBE-1, also known as the "TRIBE-1" that was organized pursuant to §16 of the Indian Reorganization Act of 1934, and is a Charter Member of the §17 Federal Corporation d/b/a the "TRIBE-1," a federally recognized corporation of the RESERVATION-1, Utah.
> Tribal Roll #####

Although the Petitioner had presented this document to the DMV office at the time he tried to register the motor vehicle, the employees at the office concluded that Petitioner did not qualify for the exemption from sales tax, age based uniform fees, or title, licensing, and registration fees because the TRIBE-1 or TRIBE-1 was not on the Division's list of federally recognized Tribal Nations in Utah.

At the Initial Hearing, Petitioner also explained that he lived within the boundaries of his tribal reservation and the seller of the motor vehicle had driven the motor vehicle to the Petitioner's residence on the reservation. He stated that after inspecting the vehicle he purchased it from the seller and the transaction occurred on the reservation. The Petitioner did not have a document or signed statement from the seller as evidence of the location of where the sale occurred.

To support his position that he was exempt from Utah taxes and fees, the Petitioner submitted an "Administrative Surresponse in Regard to Petitioner's Petition for Redetermination," prepared by PERSON-2, Tribal Chairwoman of the TRIBE-1 ("Prehearing Brief"). PERSON-2 did not attend the Initial Hearing and the Petitioner did not submit a signed power of attorney or otherwise authorize her to be his representative in this matter. However, at the Initial Hearing, the Petitioner and his spouse, who also attended the hearing, indicated that the Prehearing Brief explained their position. In this Prehearing Brief, PERSON-2 stated the opinion that "all enrolled TRIBE-1 members have been recognized by the State Government since DATE

to be a tribe under federal jurisdiction and explicitly exempt from the State's sales and use tax." In the Prehearing Brief, PERSON-2 explained:

> The TRIBE-1 right to "sales and use tax exemption" was explicitly recognized by Governor Bangerter in accordance with a U.S. Supreme Court ruling in DATE. The attached Tax Bulletin 1-87 explicitly issued to the federally approved constitutional governing body of Affiliated Ute Citizens, (aka, TRIBE-1) states: "that enrolled members of a tribe, who live within the exterior limits of the reservation, are not subject to Utah sales or use tax."
>
> There is no reference to federal recognition as a qualifying requirement; only that the purchaser be enrolled. The U.S. Supreme Court Decision in DATE affected all tribes under federal jurisdiction across the United States and still carries the force and effect of law. The only requirement for said exemption is that the member give his/her tribal roll number as evidenced by their Tribal ID Card. If verification of enrollment is needed the seller or state representative can call the phone number located on the back of the said Tribal ID Card to speak with the Enrollment Officer of the Tribe.

PERSON-2 included as an attachment to her Brief a copy of the DATE, letter from Norm Bangerter, Utah Governor at that time. This letter was addressed to PERSON-3, President, Affiliated Ute Citizens of the State of Utah. The letter stated:

> In DATE, the Tax Commission issued a bulletin concerning non-taxable sales to tribal members. This bulletin (copy attached) stated that enrolled members of a tribe, who live within the exterior limits of the reservation, are not subject to Utah sales or use tax.
> The Tax Commission did not make any determination for full-blood or mixed-blood members. They do require, however, that the member give their Federal Bureau Number as evidenced by their tribal card.

The Brief then included a copy of Tax Commission Bulletin 1-87, which was issued DATE. This Tax Bulletin explained that enrolled members of Indian tribes "who lived within the exterior limits of the reservations are not subject to Utah sales or use tax under the following Conditions. . ." The conditions stated in the bulletin were that if a purchase was made on the reservation, the purchaser must present their "tribal card" at the time of purchase and the vendor must keep a record of the non-taxable sales that included the name of the customer, date of sale, "Federal Bureau Number" and amount of the sale. If the purchase was made off of the reservation the Bulletin stated, "The purchaser must be an enrolled member of the tribe and living on the reservation as evidenced by a tribal card. The card must be presented to the vendor at the time of the purchase, and the purchased item must be delivered to the reservation. The vendor must provide proof of delivery to the reservation, such as by a licensed common carrier."

The Brief acknowledged that there was a legal interpretation of the DATE act that has been followed by government agencies and the courts that are contrary to her position, explaining in the Prehearing Brief at pages 4-5, as follows:

> The Governor's Office, nearly three generations ago, knew who the federal tribes were within the State and respected the limits of State authority (if any) within Indian Country but the "ruse" (lie) of DATE was taken up by people who made up their own facts of law and today's generation of State government officials only know the lie, whether it's by choice or ignorance is irrelevant.
>
> The Department of Justice (DOJ) was compelled to review the DATE "Ute Partition Act" in connection with litigation filed by the State's Confederated Ute citizens against the United States. The administrative review found the administrative Act codified at 25 U.S.C. §§677-677aa (UPA) was not in accordance with federal law and was not approved by Congress. It was thus omitted in its entirety and removed from the U.S. Code in 2016 as a special and not a general Act. On April 14, 2022, the UPA was repealed and removed from the United States Code in its entirety as "unconstitutional" and "not in accordance with law." The said administrative amendment was to a Congressional Act (P.L. 671, 68 Stat. 868 of 1951) that not only changed the initial intent of Congress in 1951 but said amendment was not ratified by Congress. The repeal is retroactive to 1934 and the Indian Reorganization Act (IRA).

In support of this position, PERSON-2 provided with the Prehearing Brief Exhibits 3 and 4, which were copies of pages that showed "§677. Omitted" Then, under the Editorial Notes on those pages it stated:

> Codification
>
> Section, act Aug. 27, 1954, ch. 1009, §1, 68 Stat. 868, which set out the purpose of this subchapter, was omitted from the Code as being of special and not general application.
>
> Statutory Notes and Related Subsidiaries
>
> Repeal of Inconsistent Laws
>
> Act Aug. 27, 1954, ch. 1009, §29, 68 Stat. 878, which provided for repeal of inconsistent laws, was omitted from the Code as being of special and not general application.

Also included as an exhibit to the Prehearing Brief, as Exhibit 5, was a Memorandum dated DATE, from the Acting Assistant Solicitor, Indian Legal Activities, to the Commissioner of Indian Affairs. This memorandum provided an opinion regarding the definition of the word "tribe" as used in the Act of August 27, 1954, and whether it applied to only full-blood members or if it applied to both full-blood and mixed-blood members. Included as Exhibit 6, was the Constitution and Bylaws of the Affiliated Ute Citizens of the State of Utah, which was certified on January 25, 1969.

In addition, at the Initial Hearing, the Petitioner and his spouse provided two arguments that were not presented in the Brief. They argued that the law was not being consistently applied because other members of the TRIBE-1 were receiving an exemption from the Division of Motor Vehicles. In fact, as an exhibit attached to their original appeal form, they provided a copy of a DMV receipt for an unrelated third party that showed that the age based uniform fee had been waived. Further, they provided a copy of that person's TRIBE-1 card that was photocopied over the Vehicle Registration Certificate. They also said there had been some discriminatory comments made at the DMV offices that were located near the reservation, with people being told they were "too white" to qualify. Furthermore, they argued that the TRIBE-1 was part of the RESERVATION-1.

II. Division's Position

The Division's position was outlined in its Answer to Petition for Redetermination ("Answer") and the exhibits that the Division offered at the Initial Hearing were attached to this answer. The Division had emailed this Answer and exhibits to the Appeals Unit and to the Petitioner on DATE.[2] The email address used on this email for Petitioner was EMAIL-1, which is the email address that the Petitioner provided on the Petition for Redetermination Form. It also appeared from the mailing certificate that this document was mailed by regular mail to the Petitioner at the address ADDRESS-1, which was the address that Petitioner had provided on the Petition for Redetermination form.

It was the Division's position that the title, licensing and registration fees could not be refunded to Petitioner, because Petitioner, as well as everyone else who operated a motor vehicle on the roadways in Utah, was required to pay those fees pursuant to §41-1a-201(1) and there was no basis for those to be refunded, even if the Petitioner qualified for the exemption from the sales tax and age based uniform fee.

It was the Division's position that the Petitioner was not exempt from sales tax, or the age based uniform fee, because the TRIBE-1 was not one of the federally recognized Indian Tribes. At the Initial Hearing and in its Answer, the Division explained that because the Petitioner's vehicle purchase was a private party sales transaction, the Petitioner was required to pay sales tax on the purchase at the time he transferred title and registered the vehicle pursuant to Utah Code §59-12-107(7). Regarding the Petitioner's argument that he was exempt based upon his member status in the TRIBE-1, the Division argued that the exemption did not apply to the TRIBE-1 because the TRIBE-1 was not one of the federally recognized Indian tribes. The Division cited

[2] The Appeals Unit retains these emails as part of the appeal record.

U.S. v. TRIBE-1, 946 F.3d 1216, 1217 (10th Cir. 2020). The Division also submitted as Exhibit E a copy of a notice from the Department of the Interior, Bureau of Indian Affairs, dated DATE, which stated, "This notice publishes the current list of 574 Tribal entities recognized by and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian Tribes."[3] The notice then lists the 574 federally recognized tribes. Of the tribes on the list only eight are from Utah and the TRIBE-1, or the "TRIBE-1" are not on the list. On the list were the RESERVATION-1 and the TRIBE-2, among others. The Division acknowledged that federally recognized Indian tribes and their tribal members are entitled to the protection, services and benefits of the federal government and the privileges and immunities afforded a federally recognized Indian tribe.[4] Regardless, the Division's point was that the TRIBE-1 was not a federally recognized Indian tribe and so its members are not afforded these privileges and immunities.

The Division also referred back to the Ute Partition and Termination Act, 25 U.S.C. §§ 677-677 (the "Termination Act"), which Congress passed in 1954. The Division provided a copy of the Termination Act as the Division's Exhibit G. In its answer, the Division explained:[5]

> Prior to 1954, [TRIBE-1] members were members of the TRIBE-2 of the RESERVATION-1 in Utah ("Ute Tribe"). See Uintah Valley, 946 F. 3rd at 1218. In 1954, Congress passed legislation that reorganized the Ute Tribe. See Ute Partition and Termination Act, 25 U.S.C. §§ 677-677aa (the "Termination Act"), a copy of which is attached hereto as Exhibit G. The Termination Act established that tribal membership would be limited to "full-blood" Ute members. See 25 U.S.C. § 677d. Tribal members who were "mixed-blood" Ute members ("Mixed-Blood Utes") would no longer be considered members of the Ute Tribe. See id. The Mixed-Blood Utes would go on to create and organize [TRIBE-1]. See Uintah Valley, 946 F.3d at 1219.
>
> The Termination Act, among other things, terminated the Federal Government's trust relationship with the Mixed-Blood Utes and terminated their rights, benefits, and immunities afforded federally recognized Indians under federal law. See 26 U.S.C. § 677(v). Further, the Termination Act expressly provided that "the laws of the several States shall apply to such [Mixed-Blood Ute] member[s] as they apply in the same manner as they apply to other citizens within their jurisdiction." *Id*. On August 24, 1961, pursuant to 26 U.S.C, § 677(v), the Secretary of the United States Department of Interior posted the proclamation terminating the Federal trust relationship with the Mixed-Blood Utes, as well as federal services for those members, and stated that, among other things, "the laws of the several States shall apply to the [Mixed-Blood Ute] members."

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[3] This Notice explains, "This notice is published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792), in accordance with section 83.6(a) of part 83 of title 25 of the Code of Federal Regulations, and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8."

[4] Answer, pg. 5, citing *Hansen v. Salazar*, 2013 WL 1192607, *1 (W.D. Wash. March 22, 2013).

[5] Answer, pg. 5.

The Division explained how the courts had interpreted the Termination Act. The Division explained, "In *Gardner v. State of Utah*, a Utah federal district court explained the ramifications of the Termination Act upon Gardner. 2012 WL 12893028, *1 (D. Utah August 8, 2012)." The Division stated,"The Court explained that the Termination Act provided the State of Utah with jurisdiction over Gardner, a Mixed-Blood Ute member subject to the Termination Act." See *id*. The Division pointed out that the Court concluded, "[j]ust as the [State of Utah] ha[s] the authority to prosecute . . . Gardner, the[] [State] also ha[s] the authority to collect taxes from him. Id."[6]

At the Initial Hearing, the representatives for the Division rejected the argument that PERSON-2 had made in her Brief that 25 U.S.C. §§677 had been repealed. It was the Division's argument that the code section was "omitted" not "repealed" and that omitted and repealed were two different things. They pointed out that the documentation PERSON-2 had provided stated that the section had been omitted "as being of special and not general application."

III. Post-hearing Submission

After the Initial Hearing, on DATE, PERSON-2 submitted a document titled " TRIBE-1's Administrative Complaint in Regard to Petitioner's Hearing for Redetermination on DATE." The Division submitted a Request to Strike TRIBE-1's Administrative Complaint on DATE. As noted above, PERSON-2 did not attend the Initial Hearing and the Petitioner has not submitted in this matter a power of attorney, or other written documentation authorizing PERSON-2 to be his representative. Neither PERSON-2 nor the TRIBE-1 have petitioned to intervene in the proceeding pursuant to the statutory requirements at Utah Code Sec. 63G-4-207, and they have no standing in this proceeding at this time. The parties to this appeal have appeal rights if they disagree with this decision and those appeal rights are explained below. Therefore, the Commission is not considering PERSON-2's post-hearing submission in this decision, other than to address the accusation she made that the Division's representatives had behaved unethically. PERSON-2 stated in her post-hearing submission that the representative for the Division, RESPONDENT'S REP-1, had not sent to the Petitioner a copy of his brief (referred to above as the "Answer") prior to the hearing and that he had emailed it to Petitioner after the Initial Hearing. However, the Tax Commission has a record that the Answer was emailed to the Petitioner on DATE, at the same time and in the same email that RESPONDENT'S REP-1 submitted to the Tax Commission. This was months prior to the Initial Hearing. The mailing certificate also indicates the Answer was mailed to the Petitioner at the physical address he

[6] Answer, pg. 6.

provided for the appeal on that same date. Because the Petitioner stated at the Initial Hearing that he had not seen the Answer, the Administrative Law Judge asked that the Division email it again. However, it is the Petitioner's responsibility to check his mail and email, and the Division had sent the Answer to the email and physical mail address the Petitioner himself provided, months prior to the hearing. Therefore, this complaint from PERSON-2 lacks any merit.

III. Commission Conclusions

After considering the facts presented in this matter and the parties' legal arguments, the Commission concludes that the Division's position is supported by the current case law. The Division pointed to *United States v. TRIBE-1*, 946 F.3d 1216, 1217 (10th Cir. 2020).[7] In that case, the Tenth Circuit Court of Appeals stated, "The Unitah Valley Shoshone Tribe is not a federally recognized Indian Tribe . . ." *Id.* at 1217. The Tenth Circuit Court of Appeals in that decision cited 25 U.S.C. §§677–677aa, as relevant law in 2020, noting that the Act distinguished between "full-blood" and "mixed-blood" Utes and after the Termination Act, in 1956, the final rolls were published that listed 1,314 full-blood members and 490 mixed-blood members. In the decision the Court stated, "Pursuant to the Termination Act, after publication of the list, the tribe shall thereafter consist exclusively of the full-blood members. Mixed-blood members shall have no interest therein except as otherwise provided in this Act. Thus, the Act terminated the membership of federal mixed-blood Ute Indians with limited rights surviving that determination." *Id*. at 1218 (internal quotations omitted). The Court further explained, "After the Termination Act ended their tribal membership, some of the mixed-blood Utes created an organization they called the TRIBE-1. But the organization is not, and never was, federally recognized as a tribe."

Although the Brief submitted by PERSON-2 on behalf of the Petitioner had pointed to a letter issued by the Governor of Utah on April 30, 1987, and a Tax Commission Bulletin issued on March 9, 1987, neither are currently controlling legal precedent given the more recent decisions from the courts, and, in fact, they do not clearly support the interpretation that PERSON-2 has asserted. The letter from former governor Norm Bangerter stated, "The Tax Commission did not make any determination for full-blood or mixed-blood members. They do require, however, that the member give their Federal Bureau Number as evidenced by their tribal card." Because the courts have clarified the position that the TRIBE-1 is not a federally recognized tribe, the issue has now been resolved and the members of the TRIBE-1 are not entitled to an exemption for sales tax, age based uniform fees, or title, licensing and registration

[7] The Division pointed out that the TRIBE-1 and the TRIBE-1 are the same tribe, but with a different spelling of Uinta.

fees that they are requesting. The Petitioner argued at the Initial Hearing that the TRIBE-1 was part of the TRIBE-2, but provided no documentation from the TRIBE-2 of the RESERVATION-1 that indicated that tribe considered the Petitioner to be a member.

Regarding the argument that the DMV has been inconsistent, this decision provides guidance to the Division and the Commission expects the Division to apply this guidance uniformly throughout all of its office locations.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies Petitioner's appeal of the Statutory Notice-Refund Request denial dated DATE, through which the DMV denied the Taxpayer's request for a refund of sales tax, age based uniform fees, and title, licensing, and registration fees in the amount of $$$$$.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:

taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2025.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner